

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning Deployment of Advanced)	GN Docket No. 17-199
Telecommunications Capability to All Americans)	
in a Reasonable and Timely Fashion)	

**REPLY COMMENTS OF
MESCALERO APACHE TELECOM, INC.**

INTRODUCTION

Mescalero Apache Telecom, Inc. (MATI) hereby submits these reply comments in response to issues raised in the Notice of Inquiry issued in the above captioned proceeding.¹

MATI was formed for the purpose of bringing modern communications services to the people of the Mescalero Apache Reservation. MATI serves the Mescalero Apache Reservation, an area consisting of approximately 720 square miles in south central New Mexico. MATI, as a wholly owned enterprise of the Mescalero Apache Tribe, undertook the risky venture of serving a historically underserved and economically disadvantaged area in order to afford the Mescalero Apache people with access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, and thereby increase the Tribe's access to education, commerce, government, and public services. MATI, by taking the steps it did, also helped bridge the physical distances between those living on the Reservation and the emergency, medical, employment, and other services that they may need to improve the standard of living on the Reservation. MATI continues its commitment to provide service to the Reservation, which now, as with the rest of the United States, must include investment in broadband capable services.

¹ *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, Thirteenth Section 706 Report Notice of Inquiry, FCC 17-109 (rel. August 8, 2017) (*NOI*).

MATI, as a Tribally-owned and operated broadband provider, continues to be concerned about the disparity between advanced service capabilities in Tribal areas versus the rest of the country. In the Commission's latest Broadband Progress Report, the disparity in broadband availability between Tribal and other areas of the country is striking:

Americans Without Access to Fixed Advanced Telecommunications Capability²

	Population (millions)	Percentage of Population
United States	33.982	10%
Rural Areas	23.430	39%
Urban Areas	10.552	4%
Tribal Areas	1.574	41%
Rural Areas	1.291	68%
Urban Areas	0.283	14%

Regardless of arguments over how to either measure deployment or “progress” in the context of the next Broadband Progress Report, the fact remains that the Commission has done very little to close these gaps. It is MATI's belief that the FCC must address this disparity immediately through effective and targeted universal service support measures, not by revising how it defines the availability or progress towards availability of broadband services – especially in Tribal areas.

REPLY COMMENTS

MATI warns the Commission that the reality in many rural Tribal areas of the country is that reasonably comparable broadband services, in terms of both deployment and price, are not reasonably available. According to the most recent Broadband Progress Report, which admittedly relies on 2014 data, seventy-two percent (72%) of Americans living in rural Tribal areas in the lower 48 states lack access to fixed advanced telecommunications capability.³ The Commission cannot, and must not, attempt to define that reality away by substituting “progress” for availability and by considering an area served by mobile *or* fixed broadband services. Instead, the reality of a digital divide in Tribal areas must be confronted head on.

² 2016 Broadband Progress Report, GN Docket No. 15-191, rel. January 29, 2016 (FCC 16-6), Table 1

³ *Id.*, at Table 2

In addition to addressing ways to accelerate advanced telecommunications deployment as required by Section 706, the Commission must ensure that broadband capable networks currently in operation can continue providing vital broadband services to customers. In MATI's specific case, over 95% of customers on the Mescalero Apache Reservation enjoy access to broadband services of at least 10/1 Mbps. MATI accomplished this through a combination of, among other things, federal and state universal service support and favorable loan terms through the Rural Utilities Service (RUS). However, in a post-*Transformation Order*⁴ and *RoR Reform Order*⁵ environment, MATI has struggled to maintain this network and the services it enables due to funding cuts, regulatory hurdles, and uncertainty. Thus, in order to not only ensure *progress* in broadband capable infrastructure deployment, the Commission must also ensure these networks' *survival*.

Deployment of Advanced Telecommunications Capability

In the *NOI*, the Commission apparently proposes to break from past assessments and base its conclusions required by Section 706 of the Act on the *progress* made in the deployment of advanced telecommunications capability (i.e., broadband).⁶ This stands in contrast to past investigations where the Commission determined the success or failure of efforts under Section 706 based on availability of broadband services capable of delivering a minimum speed (25/3 Mbps). MATI partially agrees with USTelecom's position on this issue⁷, but believes that while progress can be a factor in the Commission's Section 706 determination, the availability as of a certain point in time is the best way to see if advanced telecommunications capability is being deployed in a timely reasonable manner. Commissioner Clyburn is correct when she states:

“Finally, this NOI seeks to measure deployment in terms of year-over-year progress rather than whether the service is actually meeting the needs of consumers. This seems both practically difficult and contrary to the statute.”⁸

⁴ *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (FCC 11-161, rel. November 11, 2011)

⁵ *In the Matter of Connect America Fund*, Report and Order and Order on Reconsideration, WC Docket No. 10-90 (FCC 16-33, rel. March 30, 2016)

⁶ *NOI* at 4

⁷ Comments of USTelecom, filed September 21, 2017 at ii

⁸ *NOI*, Concurring Statement of Commissioner Mignon L. Clyburn (*Clyburn Statement*)

MATI is also concerned that the Commission will entirely replace the snapshot availability data with a “progress” standard. As stated above, MATI agrees that measuring progress can be a factor in the Commission’s Section 706 determination, but it cannot be the only factor. Even if “progress” is succinctly defined, in and of itself, it does not reflect the reality of broadband availability in Tribal areas, nor would it result in sufficient competent data upon which to base federal, state, Tribal, or local broadband policies. Progress, by itself, should always be a goal, but it must lead somewhere. Moreover, progress measured in one year may regress in subsequent years, especially if the Commission neglects to address the overall RoR carrier USF program funding deficiencies as discussed further below. In the case of the Commission’s Section 706 determination, progress must lead to broadband availability to all customers in Tribal areas. The only way to measure this factor is to take a snapshot at a given point in time, much as the Commission is doing today.

Broadband Availability Standard

MATI agrees with NTCA’s comments on the issue of changing the broadband availability standard in regards to the technology available. Instead of the standard being mobile *and* fixed availability, the Commission proposes to change to mobile *or* fixed availability.

“The Commission should not consider the mere availability of some form of broadband Internet access as part of fulfilling its Section 706 responsibilities. Mobile wireless broadband service, while clearly valuable to consumers of all kinds, is simply not a substitute for a robust, high-quality, fixed wireline connection that so many urban consumers take for granted – and in rural areas in particular, meaningful access to mobile broadband will increasingly depend upon robust fixed networks within even just a few hundred feet of every location where access is desired.”⁹

Besides mobile broadband not being a substitute for fixed, MATI is concerned that defining down availability in this way will artificially inflate availability data in Tribal areas, which will lead to even less focus on the real and persistent needs in these areas.

As for the broadband speed benchmark, the Commission should retain at least 25/3 Mbps, although MATI is in full agreement with Commissioner Clyburn’s statement that “we sell consumers short by proposing a speed benchmark that is way too low.”¹⁰ In Tribal areas, an

⁹ NTCA Comments, GN Docket No. 17-199, filed September 21, 2017 at 3

¹⁰ *Clyburn Statement*

argument can be made that, due to the generally geographically isolated nature of these areas, along with economies that “lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country”¹¹ access to more robust, higher bandwidth services than what is available in urban areas should be available. In addition, by maintaining the current 25/3 Mbps speed benchmark, the Commission may be relegating the United States and Tribal areas to second class (or worse) status worldwide. As stated by one commenter:

“Troublingly, however, the current 25 Mbps download, 3 Mbps upload (“25 Mbps/3 Mbps”) speed benchmark for fixed broadband service and the NOI’s proposed 10 Mbps download, 1 Mbps upload (“10 Mbps/1 Mbps”) mobile speed benchmark fall short of international broadband targets.”¹²

Actions to Accelerate Advanced Telecommunications Deployment

It is imperative that the Commission take immediate action to accelerate deployment of, and ensure the continuing viability of, advanced telecommunications capable networks in Tribal areas. To this end, MATI is in full agreement with NTCA:

“Ensuring the availability of ‘advanced telecommunications service’ for these rural consumers requires a ‘right-sized’ High Cost program budget that advances and sustains broadband. Unfortunately, detailed evidence on the record in the Commission’s USF proceeding demonstrates that the budget for the RLEC High Cost support program is insufficient to enable the delivery of broadband Internet access service to wide swaths of rural America or to enable millions of rural Americans to procure standalone retail broadband Internet access services at reasonably comparable rates.”¹³

The key concept in the above statement is that the current RLEC High Cost program budget is inadequate. NTCA goes on to state that the Commission should immediately undertake a “budgetary review” to make sure the RLEC program is adequate for all of the goals it is required to support.¹⁴ MATI agrees with this, but in the meantime immediate attention is needed in Tribal areas.

The National Tribal Telecommunications Association (NTTA), of which MATI is a member, has offered the Commission an intermediate solution to the lack of broadband availability

¹¹ *USF/ICC Transformation Order* (FCC 11-161) at 1059

¹² Comments of Public Knowledge, et. al., filed September 21, 2017 at 18

¹³ NTCA Comments at 14

¹⁴ *Id.*, at 17

in many Tribal areas.¹⁵ NTTA's proposal, called the Tribal Broadband Factor or TBF, would utilize already existing funds to increase universal service support for *any* RoR carrier serving Tribal areas. The TBF would not only help accelerate broadband infrastructure deployment but would also help RoR carriers in ensuring current networks and services remain economically viable in these extremely high cost areas. As a result, MATI urges the Commission to adopt the TBF while it undertakes the budgetary review recommended by NTCA.

Conclusion

MATI appreciates the Commission's ongoing investigation into whether advanced telecommunications capabilities are being deployed to all Americans, as required under Section 706 of the Act, and that it is willing to address long-held assumptions used in making this determination. However, the Commission has made proposals in the NOI that go too far in making changes to the Section 706 process, and MATI recommends moderation in making any changes. The Commission should, for now, retain the 25/3 Mbps standard, but recognize that this standard, if kept for much longer, will relegate the United States to second class broadband infrastructure – especially in Tribal areas. MATI also urges the Commission to retain the current availability standard of mobile *and* fixed broadband, and not change this to mobile *or* fixed broadband. Finally, the Commission must take immediate steps to (1) allocate more resources to Tribal areas for broadband deployment and maintenance, and (2) determine the proper amount for the overall RLEC High Cost budget.

Given the continued digital divide between Tribal areas and the rest of the country, MATI believes the Commission must find that, for Tribal areas, advanced telecommunications capability is not being deployed in a reasonable and timely fashion.

Respectfully Submitted,

Godfrey Enjady
Mescalero Apache Telecom, Inc.
October 6, 2017

¹⁵ Letter from Godfrey Enjady, President National Tribal Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed June 19, 2015).